

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In re. PHARMACEUTICAL INDUSTRY)	MDL No. 1456
AVERAGE WHOLESALE PRICE)	Civil Action No. 01-12257-PBS
LITIGATION)	
)	Hon. Patti Saris
THIS DOCUMENT RELATES TO THE)	
AMENDED MASTER CONSOLIDATED)	
CLASS ACTION)	
)	

**SIXTH STATUS REPORT OF UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES CONCERNING SUBPOENAS
FOR MEDICARE BENEFICIARY DATA, TRACKS 1 & 2**

The United States Department of Health and Human Services (HHS), through its undersigned counsel, respectfully submits this sixth report to the Court concerning the status of the production of Medicare beneficiary information. This report addresses data requested by the plaintiffs' subpoena duces tecum dated June 6, 2006,¹ which seeks Medicare beneficiary information relevant to the drugs at issue with respect to Track 1, Class 1, and data requested by the plaintiffs' second subpoena served by the plaintiffs on or about August 4, 2006, concerning drugs at issue in Track 2.

¹ This subpoena was erroneously referred to in earlier status reports as being dated June 19, 2006.

1. Track 1 Subpoena

The Centers for Medicare & Medicaid Services (CMS) has completed all of the work involved in producing the Track 1 beneficiary data responsive to the June 6, 2006, subpoena. By letter dated November 1, 2006, the agency provided the plaintiffs' counsel with a statement of costs concerning the data production² and advised plaintiffs' counsel that the data will be provided upon payment of the costs.

2. Track 2 Subpoena

With regard to the plaintiff's August 4, 2006, subpoena regarding the Track 2 drugs, the HHS previously advised plaintiffs that it can provide the data by March 1, 2007. The CMS continues work on processing this request. At this stage the relevant data files have been extracted via the CMS mainframe computer. However, significant work remains to be done to merge the large number of data files into a single finder file which can then be processed against the enrollment data file so that a final list of names and addresses can be generated. The agency believes it is still on schedule to produce the Track 2 data by March 1, 2007.

The HHS notes that it has received a request on behalf of the Track Two defendants for a copy of all material produced in response to the plaintiffs' August 4, 2006, subpoena. The HHS is unsure of the propriety of producing such data to the defendants gratis in light of the costs that will be incurred by the plaintiffs for this data.

² The cost is \$206,585.00.

In any event, the HHS will not provide the defendants with any such data unless the defendants pay the HHS the costs owed by them in connection with responding to earlier subpoenas issued by the defendants to HHS. The defendants previously promised in writing to pay those costs; now they refuse.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ George B. Henderson, II
George B. Henderson, II
Assistant U.S. Attorney
John J. Moakley U.S. Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02110
(617) 748-3272

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused an electronic copy of the above "Fourth Status Report of United States Department of Health and Human Services Concerning Subpoenas For Medicare Beneficiary Data, Tracks 1 & 2" to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

Dated: November 15, 2006

/s/ George B. Henderson, II
George B. Henderson, II